

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAMELA SPORNY	:	CIVIL ACTION
	:	
v.	:	
	:	
BURLINGTON COAT FACTORY WAREHOUSE	:	
OF PHILADELPHIA, INC., et al.	:	97-5550

MEMORANDUM AND ORDER

Fullam, Sr. J. March , 1999

Plaintiff is suing Burlington Coat Factory Warehouse of Philadelphia, Inc., one of its employees, the City of Philadelphia and certain police officers, for various violations of her rights under the Federal Constitution and Pennsylvania law, in the course of her arrest and detention for shoplifting. The defendants have moved for summary judgment. The undisputed facts are as follows:

Plaintiff is a school teacher/guidance counselor. On December 7, 1995, plaintiff stayed home from school on account of illness - diarrhea, vomiting, etc. ("stomach flu"). In the afternoon of that day, feeling somewhat recovered, she went shopping at the Burlington Coat Factory Warehouse of Philadelphia store. She made several purchases (a coat, a suit, and some underwear for her sons). The total cost of these purchases was \$120, which plaintiff paid by credit card. The cashier's counter where she made her payment was on a lower level of the store, and

plaintiff proceeded to the store exit on the next higher level. As she was leaving the store with her purchases, an alarm sounded. Security personnel ascertained that, in the same bag with her other purchases, there was a pocketbook which (a) still had the plastic sensor attached and (2) did not appear on her cash-register receipt.

At the time of this discovery, plaintiff was again feeling ill (earlier in her shopping trip, she had dealt with a bout of diarrhea), and felt the need to throw up. She became very upset, and tried to insist upon leaving the store so that she could get some fresh air and perhaps find a suitable place in which to throw up. Plaintiff was not permitted to leave, but was taken to an interior office where eventually she was permitted to use the bathroom. The assistant store manager telephoned the cashier who had handled plaintiff's purchases, and was advised by the cashier that no pocketbook had been among the items in plaintiff's possession when she went through the cashier's counter. Thereupon, the police were called.

It has apparently been a longstanding practice of the Philadelphia Police Department in that section of the city that, when a store security person detains a shoplifting suspect, the suspected person is transported to the 15th Police District for further investigation. In accordance with that arrangement, the Philadelphia police officers transported plaintiff to the 15th

District office. The officers carrying out this transportation have testified to the effect that, since the pocketbook bore a price tag of only \$9.90, and since plaintiff was a school teacher and had made significant other purchases, and was willing to pay for the pocketbook, the store personnel were making too much of an issue out of the whole matter. Eventually, the assigned detective apparently reached the same conclusion. The police declined to prosecute defendant criminally, and she was permitted to return home.

Plaintiff's detention at the store lasted less than a half hour. The initial detention began about 3:00 p.m. Plaintiff arrived at her home, after being released by the police, sometime around 8:00 or 9:00 p.m. The decision to release her was made at approximately 6:30 p.m., but plaintiff had to wait for a neighbor to arrange her return transportation.

The parties have devoted a significant portion of their argument to the question of whether the defendant Burlington can properly be regarded as a "state actor" for purposes of Section 1983 liability; and whether what the police officers did on this occasion was pursuant to a policy or practice for which the City of Philadelphia can be held liable. To some extent, however, I conclude that these issues may involve choosing among conflicting factual inferences from the undisputed evidence, and are therefore probably not amenable to summary disposition. For

purpose of ruling on the pending motions for summary judgment, it will be assumed that plaintiff can overcome these hurdles.

But I conclude that the defendants are entitled to summary judgment in their favor because in light of a Pennsylvania statute and the undisputed facts of this case, there was probable cause for plaintiff's detention. The relevant statute, 18 Pa.C.S. §3929 provides as follows:

"(c) Presumptions. - Any person intentionally concealing unpurchased property of any store or other mercantile establishment, either on the premises or outside the premises of such store, shall be prima facie presumed to have so concealed such property with the intention of depriving the merchant of the possession, use or benefit of such merchandise without paying the full retail value thereof...and the finding of such unpurchased property concealed, upon the person or among the belongings of such person, shall be prima facie evidence of intentional concealment...

(d) Detention. - A peace officer, merchant or merchant's employee or an agent...who has probable cause to believe that retail theft has occurred or is occurring on or about a store or other retail mercantile establishment and who has probable cause to believe that a specific person has committed or is committing the retail theft may detain the suspect in a reasonable manner for a reasonable time on or off the premises for all or any of the following purposes: to require the suspect to identify himself, to verify such identification, to determine whether such suspect has in his possession unpurchased merchandise taken from the mercantile establishment and, if so, to recover such merchandise, to inform a peace officer, or to institute criminal proceedings against the suspect. Such detention shall not impose civil or criminal liability upon the peace officer, merchant, employee, or agent so detaining."

As noted above, it is undisputed that, when plaintiff was leaving the store, she had in her possession a pocketbook

which had not been paid for, and which was the property of the retail establishment. Under the terms of the statute set forth above, there was probable cause for her detention and for the police referral and further investigation, as a matter of law. And the statute clearly immunizes all of the defendants from civil liability for their actions.

Plaintiff makes many perfectly plausible arguments, any one of which might well persuade a jury at trial that she was not in fact guilty of shoplifting. She had bought more than \$120 worth of merchandise, and therefore arguably would be unlikely to try to steal a \$9.90 pocketbook. She was a school teacher, with no previous criminal record, and a respectable member of the community. The pocketbook in question still had the plastic sensor attached, in plain view, and plaintiff would be unlikely to have attempted to sneak it out of the store under the circumstances.

On the other hand, not only did plaintiff set off the alarm with unpaid merchandise, but she acted suspiciously in attempting to leave the store after the alarm went off. A shoplifter might well believe that concealing an article among a large number of purchased items would reduce the likelihood of detection. Not all store customers are familiar with plastic sensors and their operation. I mention these alternative arguments not in an attempt to show that plaintiff might well

have been guilty, but merely to emphasize that neither the store personnel nor the police can properly be charged with conduct which was objectively unreasonable, or with ignoring conclusive proof of plaintiff's innocence.

There is, indeed, a material issue of disputed fact as to whether the plaintiff did, as she testified, place the pocketbook on the cashier's counter for checkout - in which case, it was the cashier's error, and not plaintiff's criminality, which set off the alarm - or whether, as the cashier testified, no pocketbook was presented, all items presented by the plaintiff were rung up and paid for, and all of plaintiff's purchases were again passed over a sensor device at the cashier's counter to make sure that there were no sensors attached to any of the items after the sale. But these factual disputes go merely to questions of guilt or innocence, and in no way affect the probable cause issue.

An Order follows.

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ORDER

AND NOW, this day of March, 1999, upon consideration of the defendants' Motions for Summary Judgment, and plaintiff's responses, IT IS ORDERED:

1. The defendants' Motions for Summary Judgment are GRANTED.

2. Judgment is entered in favor of the defendants and against the plaintiff. This action is DISMISSED WITH PREJUDICE.

John P. Fullam, Sr. J.